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HARRY REICH

IBLA 76-360 Decided September 30, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneously filed noncompetitive oil and gas lease offer (NM 26880).

Affirmed as modified.

1. Notice: Generally -- Oil and Gas Leases: Applications: Drawings -- Privacy Act

   Where it does not appear that the notice required by section 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

   An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each

> as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement or information is filed within the time required by 43 CFR 3102.7.

APPEARANCES: Emmanuel B. Quint, Esq., of Quint, Marx & Chill, P.C., Brooklyn, New York, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal is brought from a decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellants' simultaneously filed noncompetitive oil and gas lease offer (NM 26880). The offer received first priority in the drawing for parcel number 194 on the September 15, 1975, Notice of Lands Available for Oil and Gas Filings.

The rejection of the offer was based generally upon noncompliance with regulation 43 CFR 3112.2-1(a) requiring that the drawing entry card be fully executed by the applicant, and upon noncompliance with regulation 43 CFR 3102.7 requiring certain information when there are parties in interest to the lease offer in addition to the applicant. The appellants contend the requirements of these regulations were satisfied by considering the drawing card together with a statement which accompanied the card.

The card, BLM Form 3112-1 (May 1974), includes the signatures of Harry Reich and Sandor Gregledi, dated September 18, 1975, on the back side of the form. The space for listing "Other parties in interest" is left blank. The face side of the card lists the name of Harry Reich, an address, parcel number and state, but the space for designating the Social Security or Taxpayer Number is left blank. A photocopy of a statement dated March 11, 1975, which accompanied the card, states as follows:

> PARTNERS IN INTEREST
>
> I HEREBY CERTIFY (1) THAT I AM A CITIZEN OF THE U.S.A. AND OVER 21 YEARS OF AGE, (2) THAT MY INTERESTS IN OIL AND GAS LEASES AND OPTIONS DO NOT EXCEED THE LIMITATIONS PROVIDED BY THE MINERAL LEASING ACT OF FEBRUARY 25, 1920 AS AMENDED, AND (3) THAT I HOLD INTEREST IN THIS APPLICATION AS INDICATED HEREIN:

Below were spaces for six signatures, addresses, social security numbers and percent of interest. Five signatures appear, including Reich and Gregledi, with addresses, social security numbers and a designation for each of 20 percent of interest.

[1] The first question to be decided concerns the lack of social security numbers on the drawing card form itself. One of the reasons for rejecting the offer was the failure to include such numbers on the drawing card. For the purpose of the discussion on this question, we shall consider the card by itself as if no attachment with the social security numbers had been filed. Were there no interdicting authority, we would conclude that the omission of information called for by the card would make the card defective as not being fully executed as required by regulation 43 CFR 3112.2-1(a). See, e.g., Ray Granat, 25 IBLA 115 (1976); John R. Mimick, 25 IBLA 107 (1976). However, the Privacy Act of 1974, P.L. 93-579, 5 U.S.C. § 552a (Supp. V, 1975), controls the extent to which this Department and other agencies may require certain information from individuals. Section 7 of that Act, 5 U.S.C. note following § 552a (Supp. V, 1975), specifically deals with requirements for private individuals to furnish social security numbers to a government agency. It provides:

> Sec. 7. (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.
>
> (2) the provisions of paragraph (1) of this subsection shall not apply with respect to -
>
> (A) any disclosure which is required by Federal statute, or
> (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
>
> (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

We are not aware of any statute or regulation specifically requiring disclosure of the social security number by an oil and gas lease applicant. However, we need not decide whether provision for the number on the drawing card which 43 CFR 3112.2-1(a) requires to be fully executed is covered by the exception under (a)(2)(B) quoted above. Even if disclosure may be required within the meaning

of that subsection, there should be compliance with subsection (b) pertaining to notice to the individual concerning the request for disclosure, the authority for making the request and the use to be made of the number. With regard to this notice requirement, the Department of the Interior Manual at 317.11.3 (March 22, 1976), states:

> Notices to Individuals. The Act requires that an individual who is asked to disclose his social security account number be informed whether disclosure is mandatory or voluntary, by what authority the number is solicited, and what uses will be made of it. Whenever an individual is asked to provide his social security number, he must be advised of this information, through an explanation on a questionnaire, on an attached notice, or in an interview handout.

Although the above Manual provision was issued after the drawing involved here, the drawing and filing period were after the enactment of the Privacy Act. The Manual reflects an interpretation and understanding of the Privacy Act. Use of the mandatory language "must" indicates that the notice is to be furnished to the individual if the request is to be made. Since there is nothing in the record which indicates that such a notice was given to applicants in the drawing, we do not believe it is appropriate for an offer on a drawing card to be rejected solely because the social security number has been omitted. Accordingly, to the extent the decision below held that a drawing card is defective because of failure to include the social security number it is in error and is so modified.

[2] Nevertheless, we find that the offer in this case was properly rejected for other reasons. The back side of the card has a space for listing "Other parties in interest." That space on appellants' card is blank. There is no reference to an attachment listing such parties. 1/ Further, the card refers to 43 CFR 3102.7. This regulation states in part regarding the showing as to parties in interest:

> A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested

1/ A stamp on the face of the card saying "SEE ATTACHMENT" appears to be a BLM stamp used for administrative purposes.

> parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. * * *

The first sentence of this regulation requires the listing of the other interested parties at the time the application is filed. The separate statement to be submitted by the other parties in interest of their qualifications and the information concerning the agreement of all the parties in interest, however, may be filed within 15 days after the filing of the lease offer. This requirement applies also to offers filed in the simultaneous drawing procedures. E.g., Mary West, 17 IBLA 84 (1974); James V. Orbe, 16 IBLA 363 (1974). The drawing card refers to this regulation, as indicated above. Further, the sole party in interest statement on the back side of the card which the applicant signs, together with his statement of qualifications, indicates that if he is not the sole party in interest, "the names and addresses of all other interested parties are set forth below."

The applicant should have listed the other parties in interest in the offer in the space provided. If he felt there was insufficient room to list them all, he could have referred to an accompanying attachment. 2/ There is no reason apparent for the omission other than perhaps sheer neglect and the applicant's belief that attachment of the statement would be sufficient, even though the card specified that the names should be set forth below. At the drawing the cards alone, without attachments, are placed together in a drum and then cards are drawn. Obviously it would be easy to overlook an attachment if there is no reference on the card to it. We believe BLM personnel should not have to bear the complete responsibility for assuring that attachments may be easily identified with the particular drawing card since they must be separated from the card during the drawing procedure. Compare D. O. Keon, 17 IBLA 81 (1974), where an argument that an additional party's qualifications were fully attested to in connection with separate offers in the same drawing and need not be

2/ As to adequacy of space, however, we note that in Gill Oil Company, 2 IBLA 18 (1971), an applicant had listed in the space provided for other parties in interest the names and addresses of eight other individuals, each identified with a 9.375 percent interest. The statements and information required by 43 CFR 3102.7 were not submitted within the time required, and the offers were held to be defective.

furnished was rejected. There the name of the other party together with an address, social security number, and 50 percent interest designation was set forth on the card under "Other parties in interest." It was held the requirements of 43 CFR 3102.7 were not satisfied when no other information was furnished within the time required. Furthermore, in cases involving the failure of a corporate applicant to show the authority of its signing officer on a drawing card where such authorization was not shown in the file referred to as containing the corporation's qualifications, we stated with respect to an argument that there was not space on the card to refer to amendments of qualifications or to specific corporate resolutions:

> * * * The regulation says that the offer "must be accompanied by a statement" showing the corporate qualifications, and this would also be true of any amendments to those qualifications. There is sufficient room on the card for appellant to have added after the referenced serial number the words "amendment attached" or "see amendment attached." Appellant then could have filed with the card a certificate evidencing the resolution by its Board of Directors, which it claimed to have filed in the Utah State Office on March 5, 1975.

Manhattan Resources, Inc., 22 IBLA 24, 26 (1975). Thus, we have recognized that attachments to drawing cards may sometimes be necessary to supply all the information required but that the attachments should be referred to on the card.

We agree with the BLM decision that the attachment failed to meet the requirements of 43 CFR 3102.7 in that there were no other documents or information filed within the time period to supply deficiencies.

As for the statement of qualifications of the parties, the photostatic copy is dated nearly 6 months prior to the filing of the offer. It is apparent that the regulations, by requiring the statement with the offer or within 15 days thereafter, contemplate the showing of the parties' qualifications to be within that time frame. It is very possible in legal contemplation, although concededly not very likely practically, that there could be a change in a party's qualifications in that period of time.

As to the agreement of the parties, the BLM decision indicated a copy of a written agreement among the parties was not supplied within the time required nor was the nature of the agreement set forth, if oral. Appellants explain on appeal that no copy of a written agreement was submitted because there was an oral agreement. However, there is no indication on the statement furnished by the

parties that the agreement is oral and it is also unclear from the statement what the nature of the agreement among the parties is. We believe the mere statement of "PARTNERS IN INTEREST" and the percentages of interest following their names is not adequate. We do not know if the percentages of interest are of record title interest or some other interest in the proposed lease, nor is their characterization as partners in interest such a precise phrase of art which would adequately explain the nature of their interest. Regulation 43 CFR 3100.0-5(b) defining "Sole party in interest," explains the reasons for the requirement concerning disclosure of all parties interested in a lease. It then states:

> * * * An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

In order to accept appellants' drawing card and attachment as adequately meeting the requirements of the regulations, we would have to make every possible assumption favorable to the appellants to help try to clarify what is not clear from those documents themselves. However, there are adverse parties in a simultaneous drawing. Therefore, we cannot ignore omissions and uncertainties in the offer and attachment. Cf. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Also the explanations offered on appeal cannot cure the defects in the offer. James D. Caddell, 25 IBLA 274 (1976). Because we find the offer was properly rejected as deficient for the reasons above given, we need not decide whether it was defective for additional reasons stated by BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by our discussion concerning the social security numbers.

Joan B. Thompson
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

ADMINISTRATIVE JUDGE LEWIS DISSENTING:

I agree with the holding of the majority that the absence of a social security number from the face of the simultaneous oil and gas entry card is not a valid reason for rejecting appellants' lease offer. Section 7 of the Privacy Act of 1974, 5 U.S.C. § 552a note (Supp. IV, 1974). However, I am unable to agree with the majority's resolution of the two main issues upon which their affirmance of the decision below is based: (1) the form has not been fully executed in compliance with 43 CFR 3112.2-1(a) and (2) the statement signed by the interested parties does not meet the requirements of 43 CFR 3102.7.

The regulations require that a lease offer submitted in the simultaneous filing procedures pursuant to 43 CFR Subpart 3112 be filed on an approved form (simultaneous oil and gas entry card) which must be signed and "fully executed" by the applicant. 43 CFR 3112.2-1(a). This Board has consistently held that simultaneous oil and gas entry cards which are incomplete will be rejected. Ray Granat, 25 IBLA 115 (1976) (omission of name of State in which land is located); John R. Mimick, 25 IBLA 107 (1976) (entry card not dated); Albert E. Mitchell, III, 20 IBLA 302 (1975) (omission of name of State in which land is located). However, I disagree with the majority that the entry card has not been fully executed because the space on the card for listing other parties in interest is left blank where the other parties in interest are named on an attachment filed together with the card.

The majority is disturbed by the fact that the entry card does not specifically state "See attachment," in the writing of the appellant. There is no doubt that the attachment herein involved physically came in with the entry card. The only reasonable conclusion from that circumstance is that the appellant intended to file the two documents together. If appellant had stated on the card "See attachment," that would alert the BLM office and help prevent the attachment from being lost and from not being considered as filed with the card. But no question has been raised here that the attachment was not in fact filed with the card. Therefore, the only logical conclusion is that the attachment was filed with the entry card; it was so treated by the BLM office, and it is part and parcel of the filing.

In my view the issue here is not whether the entry card has been fully executed, unlike the Granat, Mimick, and Mitchell cases, supra, because all of the required information was provided in this case, either on the card or the attachment. The issue is whether information which it is not feasible to reproduce on the card itself because of space limitations may be supplied on a supplemental statement attached to the card.

Apart from holding that all information required to be filed with a simultaneous oil and gas lease entry card must be filed on the card itself, this Board has suggested that it is acceptable to file supplemental information on an attachment filed with the entry card where there is a lack of room on the card itself to show the required information. Manhattan Resources, Inc., 22 IBLA 24, 26 (1975).

I do not believe that use of an attachment to the simultaneous oil and gas entry card where required by necessity would place an undue burden on BLM personnel. Indeed, the alternative would be to place a premium on miniature writing which would exact a heavier burden in terms of legibility. See William D. Sexton, 9 IBLA 316 (1973). Therefore, the majority's reference to Gill Oil Company, 2 IBLA 18 (1971), wherein the applicant accomplished the feat of displaying on two lines the names of eight interested parties together with the percentage of their interest, seems hardly applicable.

I further disagree with the finding of the majority that the statement of interest signed by the offeror and all of the interested parties fails to comply with 43 CFR 3102.7. A separate statement of interest is a necessary part of any oil and gas lease offer where the offeror indicates he is not the sole party in interest. Wesley Warnock, 17 IBLA 338 (1974); 43 CFR 3102.7. Such statement must be signed by the offeror and the interested parties and must set forth:

> [T]he nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written.

43 CFR 3102.7.

The statement filed in the present case is entitled "Partners In Interest." A "partner" is defined as one who has united with others to form a partnership in business. Black's Law Dictionary 1276 (4th Ed. 1951). A "partnership" is defined as a voluntary contract between two or more competent persons to place their money, effects, labor, and skills, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. Black's, supra at 1277. Accordingly, the description of the parties in the statement as partners, when coupled with the designation of the percentage of interest held by each party, is effective to establish the nature of the agreement between the parties, the nature of the interest of the parties, and the extent of that interest. A statement providing this information is sufficient, where a statement of qualifications is also provided.

Wesley Warnock, supra 1/; W. D. Girand, 13 IBLA 112 (1973); see Thomas Connell, 7 IBLA 328 (1972). The absence of a copy of a written agreement between the parties other than the statement filed is not prejudicial in the absence of any indication in this case that the partnership has been reduced to a written agreement. The regulation plainly states that a copy of any agreement between the parties is required only where such agreement has been reduced to writing. 43 CFR 3102.7.

The question of the earlier dating of the attachment containing the statement of the parties in interest with respect to the nature and extent of their interest and their qualifications remains. The regulation requires only that the statement "must be filed not later than 15 days after the filing of the lease offer." 43 CFR 3102.7 (emphasis added). This was done by appellant. The regulation makes no requirement as to time of execution of the statement. The offer is signed and dated by the offeror, Harry Reich, contemporaneously with the time of filing. The fact that the statement of interest and qualifications signed by the other parties in interest was dated earlier is not, in my opinion, a violation of the regulations. Moreover, it is reasonable to conclude that the attachment was true as of the date of the filing, regardless of its earlier date. Support for accepting the earlier dated attachment can be found in the regulation at 43 CFR 3102.4-1, which permits an offeror to refer to its corporate qualifications set forth in an earlier dated file in the BLM office.

For all the foregoing reasons, I would reverse the decision appealed from.

Anne Poindexter Lewis
Administrative Judge

1/ The statement filed regarding parties in interest in the Wesley Warnock case, supra, was said to be insufficient because 1) it was not signed by the offeror as well as the other parties in interest and 2) it did not give details of the agreement between the parties (the statement pertained to qualifications only). It should be noted that regardless of other deficiencies in the statement, rejection of the offer in Warnock was compelled by the fact that the statement was filed after expiration of the time limit. Id. at 342. Thus Warnock is distinguishable from the present case.